

GREAT RIVERS ENVIRONMENTAL LAW CENTER

705 OLIVE STREET, SUITE 614
ST. LOUIS, MO 63101-2208

LEWIS C. GREEN, PRESIDENT

BRUCE A. MORRISON
KATHLEEN G. HENRY
ATTORNEYS

TELEPHONE (314) 231-4181
FACSIMILE (314) 231-4184

WWW.GREATRIVERSLAW.ORG

MELODY MONROE
DEVELOPMENT DIRECTOR

April 16, 2003

APR 16 2003

APR 18 2003

Water Docket
Environmental Protection Agency
Mailcode 4101T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Attn: Docket ID No. OW-2002-0050

Re: Advance Notice of Proposed Rulemaking on the Clean Water Act
Regulatory Definition of "Waters of the United States", 68 Fed. Reg. 1991-1998

Dear Sir or Madam:

We are writing to express our strong opposition to the Environmental Protection Agency's Advance Notice of Proposed Rulemaking ("ANPRM") on the Clean Water Act regulatory definition of "Waters of the United States." 68 Fed. Reg. 1991-1998, January 15, 2003. The proposed ANPRM violates the public trust doctrine, in that it will allow for the destruction of the nation's valuable wetlands.

The proposed ANPRM gives greater power to developers and polluters and emphasizes development over ecosystem sustainability and habitat conservation, which until now were basic concepts for managing the nation's waters. The proposed changes work to weaken the current process for managing the nation's waters, and tip the balance of power away from independent scientists and the public and toward local decision-makers and powerful industries.

The Environmental Protection Agency should consider first the protection of waters critical to wildlife habitat and environmental sustainability, not profits for developers and polluters. Maintaining clean waters for wildlife and plants is the most basic responsibility of our public waters managers; it cannot be voluntary. We need to save America's waters and their wildlife for future generations.

29

GREAT RIVERS ENVIRONMENTAL LAW CENTER

Water Docket
Environmental Protection Agency
April 16, 2003
Page 2

In this ANPRM, the EPA states: "There is an extensive body of knowledge about the functions and values of wetlands, which include flood risk reduction, water quality improvement, fish and wildlife habitat, and maintenance of the hydrologic integrity of aquatic ecosystems." 68 Fed. Reg. 1994. This shows that the EPA knows the value of wetlands, and is only pretending to seek input before it guts the Clean Water Act. The value of isolated and ephemeral waters had also been widely documented: indeed, the existing section 404 definition of waters of the United States has been acceptable for thirty years. The *SWANCC* decision should not be extended by an agency with the name "environmental protection" in its title. This proposal goes far beyond *SWANCC*.

In propounding these new regulations, the Bush Administration seeks to destroy the protections granted to the waters since 1972, when the Clean Water Act was enacted. In propounding such devastating changes through an ANPRM rather than by statutory changes, the Administration and the EPA are surreptitiously trying to destroy the Clean Water Act without the debate that would occur through statutory change. The EPA must not use its power in this way when making such major changes to the Clean Water Act.

The proposed ANPRM is unacceptable because it weakens environmental protections for the waters of the United States. Great Rivers objects to the ANPRM as violating the public trust doctrine. Accordingly, we request that the proposed ANPRM be withdrawn.

Very truly yours,

Kathleen G. Henry, per JG

Kathleen G. Henry